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8 Attorney for Defendant and Cross-Complainant
9 ADEL M. MAHMOUD, JR.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 SELECT PORTFOLIO SERVICING)
13 , INC.)

14 Plaintiff,

15 VS.)

16 PACIFIC SPECIALTY INSURANCE)
17 COMPANY; ADEL M. MAHMOUD,)
18 JR.,)

19 Defendants.)

20 _____)
21 ADEL M. MAHMOUD, JR)

22 Cross Complainant)

23 vs.)

24 SELECT PORTFOLIO SERVICING,)
25 INC., and PACIFIC SPECIALTY)
26 INSURANCE COMPANY.)

27 Cross Defendants.)
28 _____)

CASE NO. 3:14-cv-00551 YGR

**DEFENDANT ADEL M.
MAHMOUD'S CROSS-
COMPLAINT FOR DAMAGES
AGAINST CROSS-DEFENDANTS
PACIFIC SPECIALTY
INSURANCE COMPANY AND
SELECT PORTFOLIO SERVICING,
INC.**

JURY TRIAL DEMANDED

23 COME NOW Cross-complainant ADEL M. MAHMOUD and, for
24 cause of action against Defendants, allege and state as follows:

25 **Parties**

26 1. Cross- complainant Adel M. Mahmoud, Jr. (hereinafter "Cross-
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1 complainant”) is, and at all times herein mentioned was over the age of 18
2 and residents of Contra Costa County, the City of Richmond. .

3 2. Cross-defendant Select Portfolio (hereinafter ‘SPS’) is,
4 and at all times herein mentioned was, a Utah corporation whose principal
5 place of business is Salt Lake city, Utah.

6 3. Cross-defendant Pacific Speciality Insurance Company,
7 (hereinafter (“PSIC”), on information and belief, is a corporation authorised
8 to do business under California law with its principal place of business in
9 Menlo Park, California.

10 4. Whenever in this cross- complaint an act or omission of a
11 corporation or business entity is alleged, the allegation shall be deemed to
12 mean and include an allegation that the corporation or business entity acted
13 or omitted to act through its authorized officers, directors, agents, servants
14 and/or employees, acting within the course and scope of their duties, that
15 the act or omission was duly authorized by corporate managerial officers or
16 directors, and that the act or omission was subsequently ratified by the
17 officers and directors of the corporation or business entity. As a result of
18 their business activities, cross defendant SPS, was subject to and required to
19 comply with the foreclosure avoidance provisions of the California Civil
20 Code.

21 5. Cross-Complainant is informed, believes and thereon alleges that
22 cross- defendants, and each of them, are in sole possession, custody or
23 control of e-mails, notes of telephone conversations, log entries, recorded
24 messages and other forms of communication or correspondence that identify
25 the dates, times, and persons, including, but not limited to, cross-
26 defendants’ employees, representatives and/or agents who spoke with cross-
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1 complainant; the content of those conversations, including, but not limited
2 to information, disinformation, false promises, etc. that form the basis of
3 cross-complainant's allegations.

4 6. Cross-complainant is informed, believes and thereon alleges that
5 reasonable discovery and investigation will reveal the dates, times, and
6 persons, including, but not limited to defendants' employees,
7 representatives, and/or agents, who spoke with cross-complainant; the
8 content of those conversations, including, but not limited to information,
9 disinformation, false promises, etc. that form the basis of cross
10 complainant's causes of action. Cross-complainant is informed, believes
11 and thereon alleges that such discovery and investigation will allow cross-
12 complainant to successfully amend this cross-complaint to satisfy the
13 requisite specificity for each of the allegations contained herein.

14 **Jurisdiction and Venue**

15 7. This is a cross -complaint against cross defendant who have
16 asserted the jurisdiction and venue of this court based on diversify
17 jurisdiction of the defendants including this cross-defendant. All
18 defendants resides within the Judicial district of this court.

19 **FACTUAL BACKGROUND**

20 8. Cross-complainant purchased a single family dwelling located at
21 6305 Jerilyn Avenue, in Richmond California in July 1995. In 2005 cross-
22 complainant refinanced the loan on his residence and as part of the
23 refinance he executed a promissory note and deed of trust in the amount of
24 \$407,000 (loan documents) with Argent Mortgage Company, LLC, as the
25 new lender. On information and believe sometime in 2011 the loan was
26 assigned to Bank of America which, in 2012 assigned to Wells Fargo Bank.

1 On information and belief, some time in late 2011 or early as 2012 cross-
2 defendant SPS acquired the servicing of the loan from Wells Fargo Bank.

3 10. At the time he refinanced his residence, cross defendant was the
4 owner and operator of health food café in San Francisco, which had great
5 promise for generating profit capable of supporting his mortgage. As a
6 result fo the economic down-turn in 2011 his business slowed down and
7 was at a point he was not able to meet his mortgage payment. He lost his
8 Café but found employment as a Chef and continued to pay his mortgage
9 until he was laid off of his job in October 2011 He subsequently applied
10 for loan modification with Bank of America under the Home Affordable
11 Modification Program (“HAMP”).

12 11. HAMP is a federal government program designed to prevent
13 mortgage foreclosures. (12 U.S.C. §5201 et. seq.) Through HAMP, the
14 government has encouraged mortgage lenders and servicers to provide loan
15 modification for eligible borrowers. The HAMP medification process
16 begins with preliminary evaluation by the mortgage servicer of the
17 borrower’s eligibility. If the preliminary evaluation indicated that the
18 borrower was eligible for a H’AMP modification, the servicer would then
19 offer the borrower a Trial Period Plan, usually lasting three months, during
20 which period the borrower was complies with some step and after which
21 time, the borrower would be given a permanent loan modification. Bank of
22 America is one of many mortgage lenders and servicers that participated and
23 issued Trial Period Plan.

24 12. Cross- complainant received a Trial Period Plan and was
25 negotiation his payment plan when the loan, on information and belief, was
26 assigned to Wells Fargo Bank with its loan servicer cross-defendant SPS.

1 11. On or about October 12, 2012 Cross defendant SPS advised
2 cross complaint that “There is help available if you are having difficulty
3 making your mortgage loan payments. You may be eligible for Home
4 Affordable Modification, part of the initiative announced by the President
5 Obama to help homeowners. **As you mortgage loan servicer, we will**
6 **work with you in an effort to make your mortgage payment affordable”**
7 (Emphasis therein).

8 12.. After cross-complainant received the October letter from SPS,
9 he promptly copied his previously submitted documents to SPS, even
10 though as a successor in interest, to the deed of Trust of Bank of America
11 has in its possession all the documentation necessary and that plaintiff
12 qualified for Trial Period Plan. In spite of submission of the
13 documentation, SPS continued sending to cross-complainant the same
14 letter, over and over again, that stated “Thank you for contacting us to
15 discuss your home loan needs. We are pleased to let you know that you
16 meet the criteria required to apply for a new modification program recently
17 announced as a result of the U.S. Department of Justice and State Attorneys
18 General Global Settlement....” Several these letters were received from
19 SPS by cross-complainant October 12, 012 through October 2013. Cross
20 complainant believes that there was deliberate delays in reviewing cross-
21 complaints’ documents, and SPS was engaged in lies about whether
22 required documents had been received, and lies also about whether cross-
23 defendants modifications were actually under review.

24 13. On or about December 18, 2012 cross-complainant residence and
25 its contents was damaged by fire and cross-defendant was forced to
26 evacuate his residence. At the time of the corss-defendant has insurance
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1 policy to cover damages to his residence and its content with PSIC. On
2 information and believe cross-defendant alleges that the policy that was in
3 effect at the time was policy # ANG 0218413-08 (01).

4 **FIRST CAUSE OF ACTION**

5 ***Breach of Contract***

6 ***(Against Pacific speciality Insurance Company)***

7 14. Cross-complainant incorporates the allegations from 1 to 13 as
8 though fulls set forth herein.

9 15. . On or about December 18, 2012 a massive fire severely
10 damaged and/or destroyed cross-complainant's residence and contents.
11 Cross-complainant was forced to evacuate and relocate as a result of the
12 fire.

13 16. Following the fire cross-complainant notified PSIC and filed a
14 claim for damages for his residence, personal belonging and for his
15 relocation. Cross-complainant filed his claim sometime late January or
16 February 2013.

17 17. The insurance adjusters came to cross-complainant's residence to
18 assess the damage to the dwelling and offered to pay cross-complainant for
19 the damages to the dwelling and sent a check written in cross-complainant
20 and Residential Mortgage as a loss payee. This amount for the property
21 damage was less than the damage actually sustained by cross-complainant.
22 PSIC and its authorized agent advised cross-complainant that the value of
23 the losses-both the dwelling, persona property was significantly less than
24 the true value of damages and/or the necessary repairs than submitted by
25 cross-complainant..

26 18. At all times herein plaintiff has fully cooperated with PSIC and
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1 provided access to the residence as well as documentation of the claim to
2 his best ability. Cross-complainant has performed each and every
3 covenant, condition and obligation that is required to be performed by him
4 under the contract, except to the extent excused, waived or made impossible
5 by Defendants' conduct. Defendant, however, denied to pay all of cross
6 complainant's damages and this constitutes a breach of contract.

7 19. Cross-complainant alleges that PSIC breached the insurance
8 contract by:

- 9 a. failing to promptly and reasonably adjust the claim.
- 10 b. failing to properly train and /or instruct its adjusters and/or
11 agents
- 12 c. failing to take into account increases in the cost of labor,
13 material and/or replacement costs and adjusting claims for these increased
14 costs;
- 15 d. failing to timely provide sufficient funds for the repairs and
16 replacement of the subject property.
- 17 e. failing to property evaluate and provide a fair market value
18 for the personal property destroyed/damaged by the fire..
- 19 f. failing to pay for sufficient living expenses incurred by
20 cross-complainant his insured residence in the time frame of the relevant
21 insurance contract.
- 22 g. failing to promptly adjust and property pay the policy limits
23 for the plaintiff's loss sustained at his residence.
- 24 i. Any other acts or omissions to be shown at trial on the
25 merits.

26 20. As a proximate result of PSIC's breach , Cross- complainant
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1 sustained damages in the amount to be established at the trial of this action.

2 WHEREFORE, Cross- complainant prays for judgment as set for th
3 below.

4 **SECOND CAUSE OF ACTION**

5 ***Breach of Covenant of Good Faith and Fair Dealing***

6 ***(Against PSIC)***

7 21. Cross- complainant incorporates the allegations from 1 to 13 as
8 though fulls set forth herein.

9 22. The insurance contract between cross-complaint and PSIC
10 contained an implied covenant of good faith and fair dealing by and
11 between the parties which prohibits them from engaging in any activity or
12 conduct which would prevent the other party from receiving the full benefit
13 of the contract.

14 23. Cross-complainant has fully performed all covenants, conditions
15 and obligations required by the contract to be performed by reason, except
16 to the extent waived, excused or made impossible by defendant's breach of
17 the contract.

18 24. PSIC breached the good faith and fair dealing by the following
19 activity and/or conduct:

20 Failing to acknowledge and act reasonably promptly upon
21 communications with respect to claims arising under insurance
22 policies, failing to adopt and implement reasonable standards for the
23 prompt investigation and processing of claims arising under insurance
24 policies, not attempting in good faith to effectuate prompt, fair, and
25 equitable settlements of claims in which liability has become
26 reasonably clear, failing to settle claims promptly, where liability has
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1 become apparent, issuing a check with the name of various loss payee
2 without providing the address and advising the loss pay, thereby effectively,
3 delaying any repair work on the dwelling.

4 25. PSIC acted oppressively, fraudulently, and maliciously, in a
5 willful and conscious disregard of Cross- complainant 's right, and with the
6 intention of causing or in reckless disregard of probability of causing injury
7 to plaintiff.

8 26. Plaintiff suffered damages legally caused by the bad faith as
9 stated in the prayer.

10 WHEREFORE, Cross- complainant prays for judgment as set for th
11 below.

12 **THIRD CAUSE OF ACTION**

13 ***Violation of the California Homeowners' Bill of Rights***

14 ***(Against SPS)***

15 27. Cross -complainant incorporates the allegations from 1 to 13 as
16 though fulls set forth herein.

17 28. The California Homeowner's Bill of Rights explicitly provides a
18 private right of action by cross-complainant (See Cal. Civ. Code §2923.6)

19 i. against loan servicers and trustees for their conduct during
20 foreclosure, as well as

21 ii during the loan modification application submission and review
22 processes.

23 The statute specifically prohibits the practice commonly known as "dual
24 track foreclosure," whereby lenders and loan servicers continue to advance
25 the foreclosure process with respect to borrowers whose loans are
26 simultaneously being reviewed for modification eligibility.

1 29. The remainder of Cal. Civ. Code §2923.6 is aimed particularly at
2 dual tracking, the automated process that leads lenders and servicers to
3 reassure borrowers of the likelihood of modification and/or the protections
4 of the modification process against sale of the property, while
5 simultaneously pursuing foreclosure and ultimately exercising the power of
6 foreclosure.

7 30. California Civil Code 2923.6(c)(1) further provides that a
8 mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall
9 not record a notice of default or notice of sale or conduct a trustee's sale
10 until the "[m]ortgage servicer makes a written determination that the
11 borrower is not eligible for a first lien loan modification, and any appeal
12 period pursuant to subdivision (d) has expired." Subdivision (d) of Section
13 2923.6 provides 30 days from the date of a written denial for a borrower to
14 appeal the decision denying a loan modification.

15 31. In violation of the Statute Cross-complainant alleges that SPS
16 was conducting and soliciting short sale of cross complainant's while at the
17 same time SPS is assuring cross complainant that he is being considered for
18 loan modification.

19 32. Cross-complainant also alleges that on or about Noevember 13,
20 2013, SPS advised cross-complainant that SPS is "unable to approve your
21 request for assistance involving a short payoff" In fact, cross complainant
22 never applied for short payoff. Again SPS in it letter dated January 3, 2014,
23 it again advised cross-complainant SPS is "unable to complete our review of
24 your request for a Short Pay off because we have not received all of the
25 documentation were requested." Cross-Complainant never applied for a
26 short payoff and the statement of SPS is false. If there was a pay off request
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1 it must be from a party other than cross-complainant and this would be
2 violation of the dual track regulation.

3 33. Additionally, the California Civil Code §2923.7 also mandates
4 that upon a mortgage servicer to establish a “single point of contact,” with
5 whom the borrower will deal throughout the application process. Despite
6 this law, cross defendant was assigned to numerous “Home Preservation
7 Specialist” during the one year he has been waiting for his loan
8 modification. The fact is also these specialist were consistently unavailable.

9
10 [16 Under Cal. Civ. Code § 2923.7, a “single point of contact”
11 is responsible for “[c]ommunicating the process by which a
12 borrower may apply for an available foreclosure prevention
13 alternative and the deadline for any required submissions to be
14 considered for these options,’ “[c]oordinating receipt of all
15 documents associated with available foreclosure prevention
16 alternatives and notifying the borrower of any missing
17 documents necessary to complete the application,” “[h]aving
18 access to current information and personnel sufficient to
19 timely, accurately, and adequately inform the borrower of the
20 current status of the foreclosure prevention alternative,”
21 [e]nsuring that a borrower is considered for all foreclosure
22 prevention alternatives offered by, or through, the mortgage
23 servicer, if any,” and “having access to individuals with the
24 ability and authority to stop foreclosure proceedings when
25 necessary.”]

1 34. As such, SPS' actions are in clear violation of the California
2 Home Owner's Bill of Right-- restrictions on dual tracking, its requirement
3 of a single point of contact, as well as its mandatory written denial and
4 appeal procedures. Promptly, upon each of its numerous requests, SPS
5 received all necessary documentation from Plaintiffs over the course of 12
6 months; any stated deficiencies were likewise corrected in a timely manner.
7 Plaintiffs' request for a loan modification was apparently never denied; in
8 fact, upon each of Plaintiffs' diligent status inquiries, they were instead
9 referred to a case manager or contact person who was routinely changed.

10 35. As a proximate violation of these legal obligations by SPS, Cross
11 complainant sustained injury in that it was denied the opportunity to modify
12 its loan, charged fees on its loan and interest. Cross complainant also
13 believed that his loan modification would go forward and he spent more
14 than 25,000.00 repairing the fire damage on his property which he would
15 otherwise have not done so.

16 WHEREFORE, Cross- complainant prays for judgment as set for th
17 below.

18 **FOURTH CAUSE OF ACTION**

19 *Negligence*

20 (Against SPS)

21 36. Cross-complainant re-alleges and incorporates herein by reference
22 each and every allegation set forth in paragraphs 1 through 13 and 27
23 through 35 of this cross-complaint.

24 37. Cross-Defendant SPS has a duty under California Home Owners
25 Bill of Right, to not engaging in dual tracking and ensure that a single
26 contact person is assigned to cross-defendant in his loan modification
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1 application process. SPS also represented to the plaintiff that in its letter of
2 January 16, 2013 that Cross-complainant has met the criteria for loan
3 modification but failed to process his application by asking over and over
4 again the same documents that he already provided and by also
5 misrepresenting the fact that cross-complainant applied for a short pay off
6 which he never did.

7 38. As a proximate violation of these legal obligations by SPS,
8 Cross complainant sustained injury in that it was denied the opportunity to
9 modify its loan, charged fees on its loan and interest. Cross complainant
10 also believed that his loan modification would go forward and he spent
11 more than 25,000.00 repairing the fire damage on his property which he
12 would otherwise have not done so.

13 WHEREFORE, Cross-complainant prays for judgment as set for th
14 below

15 **FIFTH CAUSE OF ACTION**

16 ***(Fraudulent misrepresentation)***

17 ***(Against SPS)***

18 39. Cross-complainant re-alleges and incorporates herein by
19 reference each and every allegation set forth in paragraphs 1 through 13 and
20 27 through 38 of this cross-complaint.

21 40. SPS repeatedly beginning October 17, 2012, made
22 representation that it will work with cross complainant to “make your
23 mortgage payment affordable”. In its letter of January 16, 2013, it assured
24 plaintiff that “you meet the criteria required to apply for a new modification
25 program”. In January 24, 2013, it represented that “we are in process of
26 evaluating your loan for program that is available” . The same kind of
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1 assurances and representation were made by SPS in its letters of February 4,
2 2013, February 11, 2013, February 12, 2013, February 19, 2013, and
3 September 9, 2013, October 2, 2013. On or about November 13, 2013, SPS
4 falsely represented that cross-complainant has applied for Short pay off. It
5 stated "We determined that we are unable to assist you in the proposed
6 arrangement because the offer received was not sufficient". Cross
7 defendant never made an off for short payoff".

8 41. When SPS made the above representations, it knew they were
9 false as SPS was at the same time trying fo sell cross-complainant's
10 property to another third party through a short payoff.

11 42. Cross-complainant justifiable relied on these representations and
12 submitted all the documentation and spent numerous hours contacting SPS
13 and resubmitting the documentation. Cross-complainant also believed that
14 he would be given a fare shake at the loan modification and with that hope
15 started incurring substantial sum of money to repairing his fire damaged
16 residence out of his own resource which he would not have done.

17 43. As a proximate violation of these legal obligations by SPS, Cross
18 complainant sustained injury in that it was denied the opportunity to modify
19 its loan, charged fees on its loan and interest. Cross-complainant also
20 believed that his loan modification would go forward and he spent more
21 than 25,000.00 repairing the fire damage on his property which he would
22 otherwise have not done so.

23 44. SPS acted oppressively, fraudulently, and maliciously, in a
24 willful and conscious disregard of Cross-complainant's right, and with the
25 intention of causing or in reckless disregard of probability of causing injury
26 to plaintiff.

